Cri.A.1120/93

(2)

/- APPEAL OF PRISONER -/ Division Bench (Criminal)

No. 3-54 Name बेजो -पुरवा

Father's Name देवा Residence ग्राम- कोकालपाल पैलमरा थाना- तोंगपाल बस्तर

Age 32 वर्ष Sentenced to आजीवन कारावास on

16-7-93 under Section 302 I.P.C. by I अति. सत्र न्यायाधीश जगदलपुर

S.T.No. 78/93

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with in seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case will not be obliged to give a hearing to any legal proctitioner who shoud appear.

1. Date of application for copy of Judgement: No.
2. Date of which copy received:- 16.7.93
3. Date on which Appelisent:- 21-7-93
4. Whether the prisoner wished to be represented or not Yes/~~No.~~

No. 3364 Name बेजो पुरवा S/o देवा

Continued in 16/9/92 to 16/7/93 Jail जगदलपुर बस्तर

No. 957 /Cr-tegon./93 Dated 21-7-93

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

अधीक्षक

Superintendent-Central/Distt./Sub-Jail.

Date of receipt in C.J.M's Office 21/7/93

Date of receipt of record of accompany.

Memo of Appeal of the Appelliate Court.

No. 18/93 Dated 28/7/93

Forwarded to the Session Judge Jagdalpur.

C.J.Magistrate

मुख्य न्यायिक मजिस्ट्रेट

Date of receipt of Appelliate Court

AFR (20)

YOGENDRA SINGH KANWAR
Digitally signed by YOGENDRA SINGH KANWAR
Date: 2025.02.07 11:08:43 +0530

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr.Appeal No.1120/1993

Beko Dhurwa

-Versus-

State of Chhattisgarh

CORAM: HON'BLE SHRI FAKHRUDDIN &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Appellant by Shri N.K.Chatterjee, Advocate.

State by Shri U.N.S.Deo and Shri Ashish Shukla, Govt. Advocates/Addl. Public Prosecutors.

J U D G M E N T
(Delivered on 14.09.2005)

Per Dilip Raosaheb Deshmukh, J.

This appeal is directed against the judgment dated 16th July 1993 delivered by Shri T.C.Yadu, 1st Additional Sessions Judge, Jagdalpur, Distt. Bastar in Sessions Trial No. 78/1993 whereby the appellant was convicted under Section 302 I.P.C. for committing murder of Beko Ganga on 10.09.1992 at about 5.00 P.M. and sentenced to imprisonment for life.

2. Briefly stated the factual matrix is that the occurrence was an off-shoot of a property dispute between Beko Ganga and his elder brother Beko Dewa. On 10.09.1992 at about 5.00 P.M. Beko Dhurwa, son of Beko Dewa, had quarrled with Beko Ganga and threatened to kill him if he did not give their share of land. At night Beko Lakma P.W.1 was at his house with his father Beko

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Ganga and mother Beko Masay P.W.2. At about 7.30 P.M. brother-in-law of Beko Lakma came to their house and took away Beko Ganga while saying that he would drop him at his cottage. After some time Beko Masay P.W.2 heard shouts "save save" whereupon Beko Lakma P.W.1 and Beko Masay P.W.2 came out of the house and saw that Beko Ganga was lying on the ground. Blood was oozing from above left eye and nose. Beko Dhurwa was standing nearby. One lathi was also lying there. Beko Ganga succumbed to the head injury. F.I.R. Ex.P.1 was lodged by Beko Lakma P.W.1 in Police Station Tongpal. On 12.9.92 inquest on the body of the deceased was prepared by Assistant Sub-Inspector D.R. Singh P.W.7 vide Ex.P.14. Marg intimation ~~had~~ was lodged at Police Station Tongpal on 11.9.1992 vide Ex.P.13.

3. Dr.P.N.Shandilya, P.W.6 conducted the autopsy and found a lacerated wound on the middle side of the left eye below the middle side of eye-brow, incised wound on lateral right side of eye-brow angle of right eye 1" x 0.2" semi-circular in nature with bleeding and clear cut margins, contusion lateral side left abdomen, blister present on left side hand, skin peeled of, abrasion on the left shoulder below the armpit, blood clot present near left ear and lacerated would on middle side of left eye irregular shape 3" x 3" with blood clot present. In the opinion of the doctor, all the injuries were ante-mortem in nature. The left temporal bone was fractured. Cause of death was due to heavy bleeding from left ear and fracture temporal bone which caused brain haemorrhage.

Death was opined to be homicidal in nature vide autopsy report Ex.P.8.

4. On the memorandum Ex.P.2 of Beko Dhurwa, one lathi was seized vide Ex.P.3. One cotton *banyan* and one red coloured cotton *Gamcha* with blood like stains were also seized vide Ex.P.4 from the appellant. After completion of investigation, the appellant-Beko Dhurwa was prosecuted with one Madvi Guddi under Section 302 read with Section 34 of I.P.C.

5. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The trial Court relying upon the ocular testimony of Beko Lakma P.W.1, Beko Masay P.W.2, Beko Sukdi P.W.4 which was duly corroborated by medical evidence of Dr. P.N.Shandilya P.W.6 convicted the appellant-Beko Dhurwa for the murder of Beko Ganga under Section 302 I.P.C. and sentenced him as aforesaid. Co-accused Madvi Guddi was acquitted.

6. Shri N.K.Chatterjee, learned counsel for the appellant, has drawn our attention to the testimony of Beko Masay P.W.2 in cross-examination paragraph 2 wherein she has stated that the occurrence took place on the festival day when the appellant Beko-Dhurwa and her husband Beko Ganga had consumed liquor and were quarreling with each other upon a property dispute. While quarreling the appellant-Beko Dhurwa suddenly got annoyed and dealt *lathi* blow on the head of Beko Ganga who fell down and died. He has contended that Beko Sukdi P.W.4 has in paragraph 2 of cross-examination also corroborated the above testimony of

Beko Masay. He has further contended that although upon a sudden quarrel and in a heat of passion Beko Dhurwa assaulted Beko Ganga on the head by *lathi*, there is no evidence to establish that Beko Dhurwa intended to cause the death of Beko Ganga. He contended that at the most, knowledge that by assaulting Beko Ganga on the head, he was likely to cause his death could be attributed to the appellant-Beko Dhurwa, and therefore, the offence did not travel beyond section 304 Part-II of the I.P.C. He also contended that the appellant-Beko Dhurwa was in jail since 14.09.1992 i.e. almost 13 years, and therefore, awarding custodial sentence already undergone would meet the ends of justice. On the other hand, learned counsel for the State has argued in support of the judgment of the trial Court.

7. We have considered the rival submissions. We have also perused the record and gone through the testimony of Beko Lakma P.W.1, Beko Masay P.W.2 and Beko Sukdi P.W.4. Beko Masay P.W.2 and Beko Sukdi P.W.4 have corroborated each other by deposing that the appellant had dealt a *lathi* blow on the head of Beko Ganga which fell him down. Beko Lakma has also testified that on reaching the spot he saw Beko Ganga lying on the ground and the appellant Beko Dhurwa standing nearby. Nothing has been elicited in the cross-examination of these witnesses to rebut their testimony. The only fact which has emerged in cross-examination of Beko Masay P.W.2 and Beko Sudki P.W.4 is that the appellant and the deceased were intoxicated, there was a

quarrel upon some property dispute and the appellant suddenly got agitated and dealt a *lathi* on the head of Beko Ganga. The above evidence finds corroboration from the testimony of Dr. P.N.Shandilya P.W.6 who found fracture of temporal bone of Beko Ganga and corresponding external injuries thereon.

8. Having scanned the evidence led by the prosecution in its entirety we are of the considered opinion that the learned trial Judge has rightly concluded that the appellant Beko Dhurwa had caused the death of Beko Ganga by assaulting him with a *lathi* on the head.

9. The only point which remains for our consideration is as to what offence was committed by the appellant. In *State of M.P. v. Jhaddu and others* reported in **1991 SCC (Cri) 716,** several *lathi* blows were inflicted by the appellant on vital part like chest resulting in fracture of ribs and laceration of lungs causing death. On facts, it was held that the accused had no intention to kill but they could be imputed with the knowledge that death was likely result. Hence, conviction was altered to Section 304 Part-II and sentence of 10 years R.I. awarded by the High Court was upheld. In *Ravi Kumar v. State of Punjab* reported in **2005 Cri.L.J. 1742** in a sudden fight the accused had picked up *Dhangu* and gave two blows on the head of the deceased which proved fatal. It was held on the facts and circumstances of the case that accused had acted without premeditation in a sudden fight, and therefore, the accused was liable to be convicted under Section 304 Part-II. It

was held by the Apex Court that custodial sentence of 8 years would meet the ends of justice. In the present case, the testimony of Beko Masay P.W.2 and Beko Sukdi P.W.4 clearly show that both the appellant and the deceased were intoxicated and were fighting upon some property dispute under the influence of liquor, the appellant suddenly got annoyed and dealt a *lathi* blow on the head of Beko Ganga due to which Beko Ganga fell down and died. It is also borne out from the evidence of Beko Masay P.W.2 and Beko Sukdi P.W.4 that the appellant Beko Dhurwa had assaulted Beko Ganga upon a sudden quarrel in a heat of passion.

10. Considering the facts and circumstances of the case and the manner in which the occurrence took place and in view of the injuries sustained by Beko Ganga and the testimony of Beko Masay P.W.2 and Beko Sukdi P.W.4, we are of the considered opinion that the requisite intention for causing the death of Beko Ganga cannot be attributed to the appellant though the requisite knowledge that by assaulting Beko Ganga on the head by *lathi,* he was likely to cause his death could be attributed to the appellant. The offence committed by the appellant, therefore, squarely falls under Section 304 Part-II of the I.P.C.

11. In the result, the appeal is partly allowed. The conviction of the appellant under Section 302 I.P.C. is set aside. The appellant-Beko Dhurwa is convicted under Section 304 Part-II of the I.P.C. and is sentenced to rigorous imprisonment for ten years. He is in jail since 14.09.1992 and has already undergone the sentence. We

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therefore direct that the appellant Beko Dhurwa shall be set at liberty forthwith, if not required in any other case.

Sd/-
Fakhruddin
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge
14.09.2005